

No. 87-499

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES, INC.,
Petitioners,

vs.

COLT INDUSTRIES OPERATING CORP.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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October 30, 1987

QUESTIONS PRESENTED

1. Did the Court of Appeals for the Federal Circuit have jurisdiction over Colt's appeal? If so, there is no jurisdictional question presented, since the Federal Circuit was the proper court to decide the merits. If not, is there any reason to correct an error as to which court of appeals should have exercised appellate jurisdiction, where such an error affects only the parties to this unusual case?

2. Should this Court review the Federal Circuit's application of the long standing rule that 35 U.S.C. § 112 does not require the disclosure of the dimensions, tolerances and other manufacturing data for the patentee's commercial product that are not claimed in the patents?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Colt Industries Operating Corp ("Colt")¹ respectfully requests that this Court deny the petition by Charles R. Christianson and International Trade Services, Inc. (collectively "Christianson") for a writ of certiorari to review the opinion and judgment of the Federal Circuit entered on June 25, 1987 (PA-1-40).

¹ Colt Industries Operating Corp is a wholly owned subsidiary of Colt Industries Inc.

STATEMENT OF THE CASE

Colt appealed to the Court of Appeals for the Federal Circuit from the "final judgment on liability" and injunction entered on July 19, 1985 by the United States District Court for the Central District of Illinois (PA-67-71). That judgment, *inter alia*, invalidated nine Colt patents as a matter of summary judgment, declared all of Colt's trade secrets relating to the "M16" rifle to be void, permanently enjoined Colt from enforcing any of those trade secrets, and imposed, without discussion, antitrust and tort liability (PA-67-71). On Christianson's motion, the Federal Circuit transferred Colt's appeal to the Seventh Circuit pursuant to 28 U.S.C. § 1631 (PA-63-64). After full briefing and argument, the Seventh Circuit *sua sponte* transferred it back (PA-41). The Federal Circuit thereupon concluded that despite its view that the Seventh Circuit should have decided the appeal, the interest of justice compelled it to decide the merits (PA-27-28, 36). The Federal Circuit made short work of the district court's decision on the merits, agreeing with Colt that "the district court: focused on *no claim* in any Colt patent; relied on facts not in the record; misconstrued affidavit testimony; found antitrust liability not requested in Christianson's summary judgment motion; and relied on unprecedented legal conclusions in invalidating Colt's trade secrets and in holding Colt liable" (PA-30) (emphasis in original).

The only issue on which any of the appellate judges disagreed was jurisdiction: whether Christianson's complaint arose at least in part under the patent laws, thus making Colt's appeal properly to the Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. § 1292(c), or whether, if the complaint did not seek relief under the patent laws, the appeal should have been to the Court of Appeals for the Seventh Circuit under § 1292(a). Both courts characterized the complaint as "inartfully drafted" (PA-4, 44), which made the task of determining jurisdiction a difficult one. (A copy of Christianson's complaint is annexed hereto as an appendix.) The Seventh Circuit unanimously concluded, from its analysis of the "substance of the complaint," that this case arose under the patent laws, therefore placing the appeal

within the exclusive jurisdiction of the Federal Circuit (PA-61). Two members of the Federal Circuit panel disagreed, but were nevertheless reluctant to re-re-transfer the appeal, or certify the jurisdictional question to this Court.² The Federal Circuit therefore unanimously decided the merits (PA-27-28).

Although both courts of appeals had difficulty discerning the jurisdictional basis of the complaint, there was never any question that Christianson's motion for summary judgment and the district court's decision depended on finding Colt's patents invalid under 35 U.S.C. § 112. Christianson's motion advanced the novel theory that Colt's failure to disclose the manufacturing specifications for the "M16" rifle in nine patents for various improvements and accessories developed for that rifle invalidated those patents.³ Christianson went on to assert, and the district court held, that this failure of disclosure also invalidated all of Colt's trade secrets "relating to the M-16" (PA-69).⁴ The district court further held that Colt's "flagrant abuse of the patent laws" was a violation of the antitrust laws (PA-90-91).

² Judge Nichols, in a concurring and dissenting opinion, would have found jurisdiction by accepting the Seventh Circuit's decision (PA-37-40).

³ The district court found each of the nine challenged Colt patents "invalid from its inception" (PA-89), based on its finding that Colt had failed to comply with § 112. It is worth noting that Christianson did not challenge any of the 16 original patents covering the rifle's basic design features, but only challenged later patents Colt obtained on improvements. Moreover, Colt did not request that its patents be invalidated, as the petitioner and the Federal Circuit suggest (Pet. 10) (PA-6). Colt merely requested that the district court's judgment specify by number the nine patents the court had already declared invalid, since it was not clear either from Christianson's motion or the court's decision exactly which patents had been invalidated (PA-89).

⁴ Christianson's main object throughout has been to establish his right to use Colt's engineering drawings for all the parts employed in the "M16" rifle. Colt protected this conventional manufacturing data, consisting of the dimensions, tolerances, materials, tooling and other specifications for manufacturing parts, by such means as placing proprietary legends on its drawings, restricting its suppliers' and licensees' use of the drawings, and requiring employees to sign confidentiality agreements (PA-42-43).

Christianson was familiar with Colt's restrictions, by virtue of being a former
(Footnote Continued)

The Federal Circuit held that "[t]he district court's view that Colt violated section 112, by failing to disclose in each of its nine patents all its dimensions, tolerances, and production drawings needed to mass produce the M-16 rifle, rested on an error of law" (PA-31).⁵ The district court's critical error was its failure to measure patent disclosure by the *claimed* inventions (PA-33). Colt had presented uncontradicted evidence to the district court showing that its patents did disclose sufficient information to enable persons skilled in the art to make and use the claimed inventions, and to illustrate the best mode known to the inventor of employing the claimed inventions (e.g., PA-108). The district court, however, erroneously focused on whether the patents disclosed sufficient information to enable the mass production of parts interchangeable with those used in Colt's commercial product.

As the Federal Circuit found, "interchangeability with M-16 parts appears nowhere as a limitation in any claim" (PA-33). Therefore, "there is nothing whatever to indicate that Christianson is unable to make and use the *claimed* inventions" (*Id.*) (emphasis in original). Nor could the Court of Appeals discern any policies of the patent system that would require such detailed disclosure:

[T]he law has never required that a patentee who elects to manufacture its claimed invention must disclose in its patent the dimensions, tolerances, drawings, and other parameters of mass production not necessary to enable one skilled in the art to practice (as distinguished from mass-produce) the invention. Nor is it an objective of the patent system to supply, free of charge, production data and production drawings to competing

Colt employee. After he left Colt, Christianson improperly obtained Colt's proprietary drawings from Colt's former licensees, the Governments of the Philippines and Singapore. He used those drawings, and copies of those drawings, to purchase "M16" parts for resale to others in the United States and abroad (PA-3, 43, 94, 97; joint appendix below, A-83-86, 369-83).

⁵ Judge Nichols more pointedly called the district court's opinion "preposterous" and Christianson's theory "absurd" (PA-37,40).

manufacturers. And that is well, for such a requirement would be irrational. Many inventions are never manufactured; the decision to manufacture may be taken well after the patent has issued; printing a thousand or more documents in the patent would often be required. For those and other reasons, the law requires that patents disclose inventions, not mass-production data, and that patents enable the practice of inventions, not the organization and operation of factories. The requirement for disclosure of sufficient information to enable one skilled in the art to practice the best mode of the *claimed* invention is and has been proven fully adequate for over 150 years.

(PA-32) (emphasis in original). As the Federal Circuit found, "[t]he district court's only basis for invalidating Colt's claim to production trade secrets was its view that failure to disclose them constituted non-compliance with section 112" (PA-34). There being no basis for finding a § 112 violation, no basis remained for the district court's rulings invalidating Colt's trade secrets or finding Colt liable for antitrust violations (PA-35). The court therefore reversed and vacated the district court's decision in its entirety.

REASONS FOR DENYING THE WRIT

A. *The Jurisdictional Issue Does Not Present an Important Question.*

1. *The Federal Circuit Properly Exercised Jurisdiction.*

The exercise of jurisdiction by a court of appeals with the statutory authority to exercise jurisdiction does not present a question worthy of certiorari. That is all that occurred here. If the Federal Circuit had jurisdiction, the Federal Circuit's dicta disagreeing with the Seventh Circuit's jurisdictional holding does not matter. It is also of no substantial importance whether the Federal Circuit had the authority to decide Colt's appeal for the reasons expressed in Judge Markey's opinion (PA-27-28), for the reasons expressed in Judge Nichols' concurring and dissenting opinion (PA-37-40), or for the reasons expressed in the Seventh Circuit's opinion (PA-48-62). So long as the Federal Circuit did in fact have jurisdiction, it was proper for that court to decide the merits of the appeal.

The Federal Circuit had jurisdiction, in Colt's and the Seventh Circuit's view, because the theory of Christianson's complaint would be defeated by one or sustained by an opposite construction of the patent laws — specifically 35 U.S.C. § 112. See, e.g., *Henry v. A. B. Dick Co.*, 224 U.S. 1, 16 (1912); *Beghin-Say International Inc. v. Rasmussen*, 733 F.2d 1568, 1570 (Fed. Cir. 1984). Christianson's contention that he advanced this § 112 theory only "by way of reply to Colt's defense" that its trade secrets were valid (Pet. 14) assumes that the complaint alleged a theory of antitrust liability that did not depend on challenging Colt's trade secrets.⁶ Christianson could not, however, have stated an antitrust or tortious interference claim based on the conduct alleged in the complaint — Colt's attempts to enforce trade secrets —

⁶ Even Judge Markey, who otherwise accepted Christianson's characterization of the § 112 issue as merely a reply to Colt's trade secret defense, found that Christianson's complaint "had to and did mean that Colt was using an invalid claim to trade secrets to extend its monopoly" (PA-23) (emphasis in original).

without alleging affirmatively that those trade secrets were invalid.⁷ Furthermore, Christianson never challenged the validity of Colt's trade secrets, in the complaint or at any other time in the litigation, except by operation of his § 112 theory.⁸

In other words, only if Colt's trade secrets could be invalidated by proving that Colt's patent disclosures were inadequate would Colt's enforcement efforts be considered a possible antitrust violation. As Judge Nichols expressed it, "the whole antitrust case collapses if the disclosures were in fact all the patent law required" (PA-40).⁹ Christianson's complaint therefore hinged on an interpretation of the patent laws. The Federal Circuit was the proper appellate court to render that interpretation.

⁷ It is well established that a party's maintenance of trade secrets raises no antitrust questions, and that a party who asserts his legal rights in good faith faces no liability for tortious interference with contract. See, e.g., *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 282 (2d Cir. 1979), cert. denied, 444 U.S. 1093 (1980); *Concrete Unlimited Inc. v. Cementcraft, Inc.*, 770 F.2d 1537, 1539 (Fed. Cir. 1985), cert. denied, 107 S. Ct. 80 (1986); *Emery v. Merrimack Valley Wood Products, Inc.*, 701 F.2d 985, 992-93 (1st Cir. 1983); *Independence Tube Corp. v. Copperweld Corp.*, 691 F.2d 310, 323-24 (7th Cir. 1982), rev'd on other grounds, 467 U.S. 752 (1984); *A. & E. Plastik Pak Co. v. Monsanto Co.*, 396 F.2d 710, 714-15 (9th Cir. 1968). See also Seventh Circuit opinion in this case at PA-61-62.

⁸ In addition, the same theory of § 112 non-compliance as a rationale for invalidating Colt's trade secrets had been asserted by Christianson's co-defendants in *Colt Industries Operating Corp v. Springfield Armory, Inc. et al.* (See Federal Circuit opinion at PA-3.) In that case, which was consolidated with this one, the same district court granted a preliminary injunction in Colt's favor, which the Federal Circuit affirmed on appeal. Springfield had challenged the injunction on the same § 112 grounds later adopted by Christianson. Christianson's motion for summary judgment was an attempt to win the same argument Springfield had lost in the Federal Circuit the year before. Colt therefore considered it proper to ask the same court to consider Colt's appeal over the same issue in very nearly the same case.

⁹ The Seventh Circuit reached this same result by properly considering the "necessary" allegations of Christianson's claim, whether or not they were adequately expressed in the complaint (PA-58). In this regard, it was proper to consider Christianson's defenses to Colt's counterclaims, which more clearly expressed his patent disclosure theory than did the ambiguous paragraph 18 of the complaint (PA-5). It was also proper to consider, as the Seventh Circuit held, "the position the plaintiff adopted in . . . his motion for summary judgment" (PA-50).

2. *There Is No Conflict Between the Federal and Seventh Circuits.*

The Federal Circuit's decision to exercise jurisdiction obviated the difficulty Colt would otherwise have faced in finding a forum for its appeal. The Federal Circuit thereby also resolved any conflict between its views and those of the Seventh Circuit. By deciding the appeal, the Federal Circuit accepted, albeit reluctantly, the Seventh Circuit's view that the Federal Circuit should decide the appeal.

Colt had an absolute right to appeal, under 28 U.S.C. § 1292, from the district court's injunction. There is no gap in the jurisdictional statutes that would leave the party aggrieved by an injunction without a forum.¹⁰ Either the Federal Circuit or the Seventh Circuit had the unquestionable duty to hear this appeal.¹¹ Since the Federal Circuit heard and properly decided the appeal, there is no need for any order from this Court directing either circuit court to rehear the appeal to which Colt was indisputably entitled.

3. *This Case Is Unique.*

No conflict among the circuits exists and no other compelling reason has been presented to resolve the issue whether the regional circuits or the Federal Circuit ought to hear appeals in cases such

¹⁰ Section 1292(a) makes clear that "[e]xcept as provided in subsections (c) [providing for exclusive Federal Circuit jurisdiction in cases over which that court would have jurisdiction under § 1295] and (d) [pertaining to appeals from the Court of International Trade and the United States Claims Court] of this section, the courts of appeals shall have jurisdiction of appeals from" the interlocutory orders specified therein. (emphasis added) If the appeal from such an interlocutory order does not fall within the Federal Circuit's exclusive jurisdiction, it must fall within the jurisdiction of the appropriate regional circuit court of appeals. See Seventh Circuit opinion at PA-53.

¹¹ Thus, if both courts had persisted in refusing to hear the appeal, Colt would have been entitled to a writ of mandamus from this Court, directing the proper court of appeals to hear the appeal. See, e.g., *Harley-Davidson Motor Co. v. Buffington*, 259 U.S. 414, 417 (1922).

as this one.¹² There are no other cases like this one. Now that Christianson's theory has been decisively rejected by the Federal Circuit, other litigants are not likely to follow in Christianson's footsteps.¹³ This Court need not, therefore, provide direction regarding the proper forum for appeals in a type of case that has never existed before, and is unlikely to exist again.

Petitioner does not even contend that this case provides a suitable vehicle for reviewing the boundaries between the jurisdiction of the Federal Circuit and that of the regional circuits. Instead, petitioner presents for review only the question whether a court which states in one part of its opinion that it does not believe it has jurisdiction, may nevertheless rule on the merits of an appeal (Pet. i). That question on its face does not rise to the level of a "special and important reason" for this Court to grant review.¹⁴ Either the Federal Circuit's dicta that it did not have jurisdiction was incorrect, in which case it properly exercised jurisdiction, or the court at most correctly decided an appeal that should have been decided by the Seventh Circuit. Neither error would require correction by the Supreme Court.

Rather, a "special or important reason" to grant a certiorari petition "impl[ies] a reach to a problem beyond the academic or the episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.* 349 U.S. 70, 74 (1955). See also *Watt v. Alaska*, 451 U.S. 259, 274 (1981) (Stevens, J., dissenting) (Where "there is no reason to anticipate that a comparable issue will arise in another Circuit in the foreseeable future," the importance of the question

¹² By contrast, in *Hoffman v. Blaski*, 363 U.S. 335, 339 and n.8 (1960), relied upon by Christianson, the decisions of at least six circuits were "in great conflict and confusion."

¹³ Indeed, even before it was overturned, the district court's decision did not attract followers. A search of Shepard's and Lexis reveals that during the nearly two years the district court's decision upholding Christianson's claim was on the books, it was not cited in a single reported decision.

¹⁴ Supreme Court Rule 17.1.

presented is diminished.)¹⁵ In this case, as the Federal Circuit recognized, the "relative rarity of the present issue" argues against Supreme Court intervention (PA-27).

The decision in this case will affect only the parties. This Court noted, in *Rice v. Sioux City Memorial Park Cemetery, Inc.*, that "it is very important that [the Court] be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." 349 U.S. at 79 (quoting *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)). The jurisdictional issue in this unusual case is of no general importance.

B. The Federal Circuit Correctly Decided the Merits.

Christianson's novel theory required three unprecedented steps. First, the district court had to find that 35 U.S.C. § 112 requires the disclosure of the detailed manufacturing specifications necessary to assure the mass production of interchangeable parts used in Colt's commercial product, the "M16" rifle, even though no claim in any patent related to parts interchangeability. Indeed, the patents at issue made no claim in respect of a complete firearm of any kind. To destroy this foundation for Christianson's claim, the Federal Circuit had only to apply the well-settled rule that patent specifications need not be production specifications (PA-31-35).¹⁶

¹⁵ The Court's main function is not to correct error, and even plain jurisdictional error may not require certiorari review. See, e.g., *Key v. Wise*, 454 U.S. 1103, 1105 (1981) (certiorari petition denied despite view of three justices that jurisdictional error was "egregious").

¹⁶ The Federal Circuit did not hold, as petitioners erroneously suggest, that production specifications "could never be required disclosure" (Pet. 11). The court held only that such specifications need not be disclosed when they are

(Footnote Continued)

Step two required denying trade secret protection to all the information that Christianson contended should have been disclosed in the patents. No court had ever before invalidated a party's trade secrets solely by reason of a finding of insufficient disclosure under § 112.¹⁷ The district court did not even stop there, however, but also ordered Colt to disgorge *all* trade secrets in existence relating to "M16" rifles, whether or not related to interchangeability or to the parts mentioned in the particular

unnecessary to practicing the claimed inventions. On that issue, see, in addition to the precedents cited in the Federal Circuit's opinion (PA-32-33), *DeGeorge v. Bernier*, 768 F.2d 1318, 1323-25 (Fed. Cir. 1985); *International Telephone & Telegraph Corp. v. Raychem Corp.*, 538 F.2d 453, 459-60 (1st Cir.), cert. denied, 429 U.S. 886 (1976).

As the Federal Circuit also recognized (PA-29), the district court's decision could not be limited to "M16" rifles or even to other products that become the military standard, as the district court's opinion seems to suggest. Specifications designed to assure parts interchangeability are a common feature of manufactured products, from sewing machines to airplane engines. Those specifications are commonly maintained as trade secrets. See, e.g., *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1256 (3d Cir. 1985) (citing *Williams v. Curtiss-Wright Corp.*, 681 F.2d 161, 164 (3d Cir. 1982) (*per curiam*)). The district court's broad new standard of patent disclosure would have required massive amounts of disclosure in patent applications for inventions used in any complex mass-manufactured product.

¹⁷ The only case, as the district court recognized (PA-89), which may be read as holding trade secrets invalid based on a § 112 violation is the 1920 Michigan Supreme Court decision in *Dow Chemical Co. v. American Bromine Co.*, 210 Mich. 262, 177 N.W. 996 (1920), which had not been cited for that proposition by a single federal court in the 65 years since it was written. Even *Dow Chemical* he'd plaintiff's trade secrets unenforceable on a number of other grounds, including the plaintiff's failure adequately to safeguard the secrecy of its processes and its delay in asserting that its processes were secret. That case does not support the proposition that a § 112 violation, standing alone, would permit a court to invalidate the party's trade secrets.

Petitioner's reliance upon *Rototron Corp. v. Lake Shore Burial Vault Co.*, 712 F.2d 1214 (7th Cir. 1983) (pet. 15) to support this remedy is misplaced. That case merely recited the seemingly obvious proposition that where the patents "do disclose" the patentee's process, that process can no longer be protected after the patent expires. *Id.* at 1215.

patents. The only justification advanced for this sweeping remedy was federal preemption (PA-87-88), a theory the Supreme Court decisively rejected in *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 492 (1974). *Accord* *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 265 (1979).¹⁸ The Federal Circuit found no "basis for the district court's ruling[] that noncompliance with section 112 preempts state trade secret law" (PA-35).

In the third and final step of Christianson's theory, antitrust liability was based on the same alleged inadequacies of patent disclosure. Indeed, the district court granted final judgment upholding Christianson's antitrust claims without his even having asked for such a judgment, without any evidence that Colt had defrauded the Patent Office,¹⁹ and without any evidence relevant to such necessary antitrust inquiries as the definition of the relevant market or Colt's market power.²⁰ The Federal Circuit was amply justified in summarily overturning the district court's finding of antitrust liability (PA-35).

In short, the district court's opinion in this case was riddled with error. The Federal Circuit had no difficulty with the merits of the appeal, and opined that the Seventh Circuit would have reached the same result, had it considered the merits (PA-28). None of the questions addressed by the Federal Circuit were close or controversial.

This case presents no opportunity to clarify any unsettled issues of patent or trade secret law. It merely presents a straightforward

¹⁸ See also *Universal Gym Equipment, Inc. v. ERWA Exercise Equipment Ltd.*, 827 F.2d 1542, 1549 (Fed. Cir. 1987).

¹⁹ See *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172 (1965); *Oetiker v. Jurid Werke GmbH*, 671 F.2d 596 (D.C. Cir. 1982); *Bendix Corp. v. Balax, Inc.*, 471 F.2d 149, 153-54 (7th Cir. 1972), *cert. denied*, 414 U.S. 819 (1973); *GAF Corp. v. Eastman Kodak Co.*, 519 F. Supp. 1203, 1234 (S.D.N.Y. 1981).

²⁰ See, e.g., *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961) (under Clayton Act § 3); *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956).

application of a principle that has stood the United States patent system well throughout its long history: a patent need not disclose manufacturing data unnecessary to the claimed invention. No courts have found any conflict between patenting inventions and maintaining trade secret protection in such manufacturing details. No courts have discovered any principle of federal patent law that demands that the states deny trade secret protection to mass production data of the type Colt has endeavored to protect. No conflict between the circuits exists on these well-settled issues of trade secret and patent law. No conflict between the Supreme Court and the circuit courts exists on these issues. Petitioners have therefore presented no reason for re-examining the Federal Circuit's restatement of these long standing principles.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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RESPONDENT'S APPENDIX

BEST AVAILABLE COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES, INC.,
a Massachusetts corporation,

Plaintiffs,

vs.

COLT INDUSTRIES OPERATING CORP.,
a Delaware corporation,

Defendant.

Civil Action No. 84-4056

COMPLAINT

1. This Complaint is instituted against the above-named defendant pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15) and Section 16 of the Clayton Act (15 U.S.C. § 26) for damages, injunctive and equitable relief by reason of its violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 & 2), as hereinafter alleged.

2. Defendant (hereafter "Colt") is a Delaware corporation with its principal place of business located in the State of New York.

3. Plaintiff, Charles R. Christianson (hereafter "Christianson"), is a Massachusetts resident and citizen, and International Trade Services, Inc. (hereafter "ITS") is a Massachusetts corporation with its principal place of business in Massachusetts.

4. Colt is licensed to do business in the State of Illinois and has a registered office in Illinois.

5. The claims of plaintiff in this lawsuit, in part, arise out of transactions occurring in Illinois and in this federal judicial district and division.

6. Colt has previously sued plaintiffs in this judicial district and division, and has argued successfully in response to a Motion to Dismiss by plaintiffs that the matters out of which the claims hereafter asserted arise, occurred, in part, in this federal judicial district and in the State of Illinois.

7. Said suit by Colt against plaintiffs, known as Civil Action No. 83-4072, was voluntarily dismissed by Colt on May 11, 1984, but Colt continues to litigate in this judicial district and division against the co-defendants in said lawsuit; Colt claims in said lawsuit that the matters asserted against Christianson and ITS that were dismissed arose out of the same transactions and were related to the Colt claims against the co-defendants in said lawsuit.

8. Venue in this district and division arises pursuant to 15 U.S.C. §15 and 28 U.S.C. §1391(b) & (c).

9. Defendant ITS has been in the business of selling automatic and semi-automatic rifles, among other items.

10. Charles Christianson is the President of ITS and has been the chief operating officer of said company.

11. Additionally, Christianson's main occupation for the last 16 years has involved matters relating to automatic and semi-automatic rifles.

12. Colt controls nearly 100% of the domestic and foreign manufacture, marketing and sale of 5.56mm. automatic assault and semi-automatic rifles which fall within the designation of M-16, and Colt controls the domestic and foreign market for the manufacture, marketing and sale of M-16 parts and accessories.

13. M-16's and M-16 parts and accessories are manufactured, marketed and sold in the United States and throughout the world by Colt, Colt licensees, the co-defendants in the

aforesaid lawsuit, 83-4072, others who do not have Colt licenses, and until recently, by ITS.

14. During the late 1950's and early 1960's, Colt acquired certain rights to inventions and patents to a 5.56mm. automatic rifle, which rifle was sold to the United States government. The United States government designated the class of such rifle as "M-16."

15. Colt has licensed the United States government and certain others with respect to said patents, but said licenses have extended beyond the expiration time of the patents, most of which have now expired.

16. The term "M-16" has never been a Colt trademark or trade name.

17. As of 1980, the basic patents with respect to the Colt rifle within the M-16 designation and many of the Colt improvement patents on such rifle within the M-16 designation had expired.

18. The validity of the Colt patents had been assumed throughout the life of the Colt patents through 1980. Unless such patents were invalid through the wrongful retention of proprietary information in contravention of United States Patent Law (35 U.S.C. §112), in 1980, when such patents expired, anyone "who has ordinary skill in the rifle-making art" is able to use the technology of such expired patents for which Colt earlier had a monopoly position for 17 years.

19. ITS and anyone else has the right to manufacture, contract for the manufacture, supply, market and sell the M-16 and M-16 parts and accessories thereof at the present time.

20. In 1976, prior to the expiration of said patents, ITS expended funds to have manufactured certain tooling to be used for the manufacture of M-16 parts and accessories, which tooling was made by Casting Engineers, Inc. of Illinois and Martin-Marietta Company.

21. Colt gave ITS permission to use the tooling for which it had expended funds in 1976 to the end that the suppliers, including Casting Engineers, could make M-16 parts for ITS to sell to customers, including the co-defendants in the afore-said civil action 83-4072.

22. Contrary to the permission extended to ITS to sell Colt parts and accessories and in violation of the anti-trust laws of the United States previously cited (the Sherman Act), Colt has embarked upon a course of conduct to illegally extend its monopoly position with respect to the described patents and to prevent ITS from engaging in any business with respect to parts and accessories of the M-16, which conduct includes, without limitation, the following:

(a) Forwarded correspondence to customers and potential customers of ITS, urging them not to do business with Christianson or ITS, claiming that to do so would involve them in illegalities;

(b) Forwarded copies of inapplicable court orders to customers and potential customers of Christianson and ITS with accompanying correspondence suggesting that these court orders prohibited those customers from doing business with Christianson and ITS or that the customers would become involved in illegal conduct by doing business with ITS or Christianson;

(c) Sent additional correspondence to customers and potential customers of ITS asserting illegally its claimed rights over M-16 drawings, specifications and parts and accessories to the M-16, and falsely stating that "Colt's right" to proprietary data had been "consistently upheld in various courts";

(d) Filed a lawsuit against Christianson and ITS in this court seeking permanent and preliminary injunctive relief and damages in order to contravene the permission previously given and to illegally

extend its monopoly position, all of which has harassed and cost Christianson and ITS substantial sums in defending said matter;

(e) Pursued said lawsuit in this district in bad faith by subjecting plaintiffs to substantial expense in extended discovery procedures prior to a hearing on a preliminary injunction motion, and after the motion was denied, voluntarily dismissed said lawsuit;

(f) Used the existence of said lawsuit as a basis in the aforescribed correspondence to urge customers and potential customers of ITS and Christianson to refrain from doing business with them, and after their objective of deterring customers from doing such business had been accomplished, thereafter voluntarily dismissed said lawsuit;

(g) Otherwise engaged in conduct designed to injure ITS and its business and to prevent Christianson from making a living in his chosen profession.

23. Notwithstanding the unlawful nature of all of the foregoing efforts and demands by Colt, virtually all suppliers of ITS and customers of ITS have agreed with Colt to refrain from supplying and purchasing M-16 parts and accessories to or from ITS, which has had the effect of requiring ITS to close its doors and no longer transact business.

24. Additionally, the aforementioned acts and conduct of Colt have severely lessened competition in the domestic and foreign marketplaces and assured Colt of the maintenance of its unlawful monopoly of the manufacture, marketing and sale of M-16's and M-16 parts and accessories.

25. Accordingly, Charles R. Christianson and ITS have been seriously impaired, injured and damaged and the interstate and foreign trade and commerce has been severely restrained and monopolized by Colt.

26. By reason of and as a proximate result of the aforescribed unlawful conduct by Colt, ITS has suffered damages which include loss of past, present and future sales and profits and loss of past, present and future good will; Christianson has been deprived of earning salaries and other income from ITS and has otherwise been deprived of making a living with respect to his chosen profession as a result of the illegal conduct of Colt.

27. ITS and Christianson have been damaged in an amount not presently ascertainable, but in excess of \$9,000,000.00.

WHEREFORE, plaintiffs pray for the following:

- (1) That they be awarded trouble damages in the approximate amount of \$27,000,000.00;
- (2) That they be awarded reasonable attorney's fees for the prosecution of this action;
- (3) That a permanent injunction issue restraining Colt from attempting to illegally extend its monopoly position as previously described in the future; and
- (4) That the court award such other and further relief as may be deemed just and proper.

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES, INC., Defendants

By: /s/ Stuart R. Lefstein

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For:

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